$~33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 21st July, 2017

\+ MAC.APP. 113/2015 and CM APPL.18185/2015 (stay)

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

SHASHI & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mahesh Chand, son of Bindi Chand, died as a result of gunshot injuries suffered on 05.07.2005. At that point of time he was riding on the pillion of motor-cycle bearing registration No.UP-81Q-6549. First to sixth respondents, being dependents members of his family, instituted claim case under Sections 140 and 163-A of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal (the tribunal) on 25.08.2005, impleading owner of the motorcycle, and its insurer (the appellant herein), primarily stating that there was a case where compensation was to be awarded on the principle of no-fault liability since death had occurred in an incident that took place when attempt was made by the assailants to snatch the motorcycle and the money being carried in cash and, consequently, per the case of the claimants, the motor vehicle was in “use”.

2. The tribunal, by judgment dated 25.07.2006, dismissed the petition holding it not maintainable. This decision was challenged before this court by MAC APP.783/88/2006 which was decided by judgment dated 27.04.2012. The learned Single Judge then deciding the case called upon the tribunal to consider the relevant law on the subject to determine whether the death had occurred due to accident arising out of the use of the motor vehicle.

3. After the said remit, the tribunal held inquiry and, by judgment dated 15.12.2014, accepted the case of the claimants and awarded compensation calling upon the appellant to pay.

4. The appellant (insurance company) has come up in appeal challenging the said judgment taking exception primarily to the observations in para 5 wherein the tribunal has proceeded on the assumption that the factum of accident and death have not been disputed and it being *"an admitted case"* that Mahesh Chand *"had met with an accident involving motorcycle", "the accident"* having *"proved fatal for him"*.

5. Clearly, the judgment rendered by the tribunal is perverse. There is no admission of the kind on which the tribunal proceeded to draw conclusions. The tribunal has in fact failed to bear in mind the directions of this court in the order whereby the matter was earlier remanded.

6. Faced with the above facts, the learned counsel for the claimants fairly conceded that the impugned judgment must be set

aside. He, however, submitted that it would be proper that the matter is again remanded to the tribunal so that appropriate decision can be taken in the light of facts, circumstances and evidence of the case. The counsel for the appellant submitted that he leaves the matter for consideration of the request for another remit to the tribunal.

7. In the foregoing circumstances, the request of the claimants is accepted and the impugned order is set aside. The matter is remitted to the tribunal for further proceedings in accordance with law.

8. The parties shall appear before the tribunal on 22nd August, 2017.

9. The appeal is disposed of in above terms.

10. Statutory deposit, if made, shall be refunded to the appellant insurance company.

11. The pending application also stands disposed of.

R.K.GAUBA, J.

JULY 21, 2017
vk